



ARKANSAS JUDICIARY

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Rule 5. Service And Filing Of Pleadings And Other Papers.

(a) **Service: When Required.** Except as otherwise provided in these rules, every pleading and every other paper, including all written communications with the court, filed subsequent to the complaint, except one which may be heard *ex parte*, shall be served upon each of the parties, unless the court orders otherwise because of numerous parties. No service need be made upon parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served in the manner provided for service of summons in Rule 4. Any pleading asserting new or additional claims for relief against any party who has appeared shall be served in accordance with subdivision (b) of this rule.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) **Service: How Made.**

(1) Whenever under this rule or any statute service is required or permitted to be made upon a party represented by an attorney, the service shall be upon the attorney, except that service shall be upon the party if the court so orders or the action is one in which a final judgment has been entered and the court has continuing jurisdiction.

(2) Except as provided in paragraph (3) of this subdivision, service upon the attorney or upon the party shall be made by delivering a copy to him or by sending it to him by regular mail or commercial delivery company at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy for purposes of this paragraph means handing it to the attorney or to the party; by leaving it at his office with his clerk or other person in charge thereof; or, if the office is closed or the person has no office, leaving it at his dwelling house or usual place of abode with some person residing therein who is at least 14 years of age. Service by mail is presumptively complete upon mailing, and service by commercial delivery company is presumptively complete upon depositing the papers with the company. When service is permitted upon an attorney, such service may be effected by electronic transmission, including e-mail, provided that the attorney being served has facilities within his or her office to receive and reproduce verbatim electronic transmissions. Service is complete upon transmission but is not effective if it does not reach the person to be served. Service by a commercial delivery company shall not be valid unless the company: (A) maintains permanent records of actual delivery, and (B) has been approved by the circuit court in which the action is filed or in the county where service is to be made.

(3) If a final judgment or decree has been entered and the court has continuing jurisdiction, service upon a party by mail or commercial delivery company shall comply with the requirements of Rule 4(d)(8)(A) and (C), respectively.

(c) Filing. (1) All papers after the complaint required to be served upon a party or his attorney shall be filed with the clerk of the court either before service or within a reasonable time thereafter. The clerk shall note the date and time of filing thereon. However, proposed findings of fact, proposed conclusions of law, trial briefs, proposed jury instructions, and responses thereto may but need not be filed unless ordered by the court. Depositions, interrogatories, requests for production or inspection, and answers and responses thereto shall not be filed unless ordered by the court. When such discovery documents are relevant to a motion, they or the relevant portions thereof shall be submitted with the motion and attached as an exhibit unless such documents have already been filed. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in the proper form. In counties where the county clerk serves as the ex officio clerk of any division of the circuit court, the filing requirement for any pleading, paper, order, judgment, decree, or notice of appeal shall be satisfied when the document is filed with either the circuit clerk or the county clerk.

(2) Confidential information as defined and described in Sections III(A)(11) and VII(A) of Administrative Order 19 shall not be included as part of a case record unless the confidential information is necessary and relevant to the case. Section III(A)(2) of the Administrative Order defines a case record as any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a judicial proceeding. If including confidential information in a case record is necessary and relevant to the case:

(A) The confidential information shall be redacted from the case record to which public access is granted pursuant to Section IV(A) of Administrative Order 19. The point in the case record at which the redaction is made shall be indicated by striking through the redacted material with an opaque black mark or by inserting some explanatory notation in brackets, such as: [Information Redacted], [I.R.], [Confidential], or [Subject To Protective Order]. If an entire document is redacted, then the name of the document (with the number of pages redacted specified) should be noted in the publicly available court file and the entire document should be filed under seal. The requirement that the redaction be indicated in case records shall not apply to court records rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record; and

(B) An un-redacted copy of the case record with the confidential information included shall be filed with the court under seal. The un-redacted copy of the case record shall be retained by the court as part of the court record of the case. It is the responsibility of the attorney for a party represented by counsel and the responsibility of a party unrepresented by counsel to ensure that confidential information is omitted or redacted from all case records that they submit to a court. It is the responsibility of the court, court agency, or clerk of court to ensure that confidential information is omitted or redacted from all case records, including orders, judgments, and decrees, that they create.

(3) If the clerk's office has a facsimile machine, the clerk shall accept facsimile transmissions of any paper filed under this rule and may charge a fee of \$1.00 per page. Any signature appearing on a facsimile copy shall be presumed authentic until proven otherwise. The clerk shall stamp or otherwise mark a facsimile copy as filed on the date and time that it is received on the clerk's facsimile machine during the regular hours of the clerk's office or, if received outside those hours, at the time the office opens on the next business day.

(d) Filing With the Judge. The judge may permit papers or pleadings to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. If the judge permits filing by facsimile transmission, the provisions of subdivision (c)(2) of this rule shall apply.

(e) Proof of Service. Every pleading, paper or other document required by this rule to be

served upon a party or his attorney, shall contain a statement by the party or attorney filing same that a copy thereof has been served in accordance with this rule, stating therein the date and method of service and, if by mail, the name and address of each person served.

Reporter's Notes (as modified by the Court) to Rule 5: - 1. This Rule is essentially the same as FRCP 5 and makes no significant change in Arkansas law. With the obvious exception of ex parte proceedings, and conferring some discretion on the court in cases involving multiple parties, the Rule requires service of all pleadings, papers and other documents generated in the lawsuit on each of the other parties to the action.

2. FRCP 5(b) permits service in certain instances upon "some person of suitable age and discretion" residing in the residence or usual place of abode of the person to be served. As stated in the Reporter's Notes to Rule 4, the Committee has, in order to overcome the vagueness and uncertainty of that language, provided that in such an instance service may be had upon some person who is at least fourteen years of age.

3. FRCP 5(c) is omitted from the Rule because Section (a) adequately permits the trial judge to waive service where multiple parties are involved.

4. FRCP 5(e) permits the trial judge to accept the filing of pleadings and other papers personally. That procedure has been retained, because the clerk may not always be present.

5. Although FRCP 5 makes no provision for proof of service of pleadings, most Federal District courts require it by local rule, and it has been heretofore required in Arkansas courts. Rule 5(e) thus effects no change in that regard.

Additions to Reporter's Notes, 1984 Amendments: - Rule 5(b) is amended to incorporate provisions from Ark. Stat. Ann. 27-632 (Repl. 1979), which is now deemed superseded, making insufficient service of papers on an attorney in a case in which there has been a final order but reserved, continuing jurisdiction.

-Rule 5(c) is amended to do away with the requirement that the papers mentioned be filed. Although discovery papers are among those which need no longer be filed, requests for admission and responses to requests for admission must be filed.

Additions to Reporter's Note, 1985 Amendment: - The first sentence of Rule 5(a) is amended to make plain that all correspondence between counsel and the court is to be served upon all parties. As the Reporter's Note to the original version of this rule indicates, the phrase "every other paper" is to be given an expansive reading and includes "all pleadings, papers and other documents generated in the lawsuit . . ." Without intending to limit the breadth of the term, this amendment simply specifies by way of illustration a "paper" falling within the rule. Thus, the amended rule requires, for example, service of a precedent for judgment prepared at the court's request. Compare *Karam v. Halk*, 260 Ark. 3, 537 S.W.2d 797 (1976).

Addition to Reporter's Note, 1986 Amendment: - The 1986 amendment adds the words "or any statute" following the word "rule" in the first sentence of subsection (b). The rule thus applies not only to those papers required to be filed by the Rules of Civil Procedure, but also to documents that must be filed under the provisions of particular statutes, e.g., Ark. Stat. Ann. 34-2617 (Supp. 1985) (notice of intent to sue in medical malpractice proceedings).

Addition to Reporter's Note, 1989 Amendment: - Rule 5(b) is amended to make clear that service upon an attorney under the rule is permitted by "fax" machine or by commercial

delivery service, as well as by mail. This recognition of "new technology" is consistent with Act 58 of 1989 [16-20-109], which permits a court clerk to accept pleadings filed via fax machine.

Addition to Reporter's Note, 1990 Amendment: - Subdivision (a) of Rule 5 requires that "pleadings asserting new or additional claims for relief against [parties in default for failure to appear] shall be served in the manner provided for service of summons in Rule 4." This provision implies that a pleading asserting a new or additional claim for relief against a party who has appeared in the action need only be served on the party's attorney, as set forth in Rule 5(b). Some federal courts have so construed the virtually identical federal rule. E.g., *Dysart v. Marriot Corp.*, 103 F.R.D. 15 (E.D. Pa. 1984). However, Arkansas cases predating adoption of the Rules of Civil Procedure indicate that service by summons on a party already before the court is required in some circumstances. E.g., *Nance v. Flaugh*, 221 Ark. 352, 253 S.W.2d 207 (1953); *Arbaugh v. West*, 127 Ark. 98, 192 S.W. 171 (1917). See also *Howard v. County Court*, 278 Ark. 117, 644 S.W.2d 256 (1983) (citing *Arbaugh* with approval but not discussing Rule 5).

To clarify Arkansas procedure, subdivision (a) of Rule 5 has been amended to provide that any pleading stating a new or additional claim for relief against a party who has appeared in the action may be served in the manner prescribed by subdivision (b). Consequently, such a pleading - e.g., a counterclaim, cross claim, or amended complaint stating a new claim for relief - may be served by mail on the party's attorney, and the methods for service of process set out in Rule 4 need not be employed. Service on the attorney in this context is consistent with the basic theory of Rule 5 that service of papers on the attorney, rather than the party, will expedite adjudication of the case and constitute sufficient notice to the party to comply with the requirements of due process. See *Adam v. Saenger*, 303 U.S. 59 (1938). If a party has not appeared, however, Rule 5(a) specifically provides that service must be made under Rule 4. Similarly, if the pleading seeks to add a new party - e.g., an answer asserting a counterclaim against the plaintiff and a third person over whom the court has not previously acquired jurisdiction - the pleading must be served on the new party as provided by Rule 4. Because the plaintiff in that situation is already before the court, the pleading may be served on his attorney.

Addition to Reporter's Notes, 1993 Amendment: - Rule 5(c) is amended by adding a new sentence providing that the clerk shall not refuse to accept any paper for filing solely because it is not presented in the proper form. Virtually identical language was added to Rule 5(e) of the Federal Rules of Civil Procedure in 1991. The amendment reflects the view that a judge, not the clerk, is the proper official to make determinations of this type. Moreover, a clerk's refusal to accept a document for filing exposes litigants to the hazards of time bars.

Addition to Reporter's Notes, 1997 Amendment: - Subdivision (c) has been amended by designating the former text as paragraph (1) and by adding new paragraph (2), which addresses the filing of papers by facsimile. A statute adopted in 1989 provides that clerks may accept fax copies of pleadings but does not cover other papers that are filed. See Ark. Code Ann. 16-20-109. Paragraph (2) tracks the language of the statute but applies to any paper filed under this rule. The new sentence added to subdivision (d) makes clear that the judge may permit papers filed with him to be transmitted by facsimile.

Addition to Reporter's Notes, 1999 Amendment: - Subdivision (b) has been divided into three paragraphs, but only one change has been made. Previously, service by regular mail was sufficient in all cases. See *Office of Child Support v. Ragland*, 330 Ark. 280, 954 S.W.2d 218 (1997) (motion requesting judgment for unpaid child support). Paragraph (2) provides for

service by regular mail as a general rule; however, paragraph (3) creates an exception by incorporating the requirements of Rule 4(d)(8)(A) for service by mail on a party when, as in *Ragland*, a final judgment or decree has been entered and the court has continuing jurisdiction. In this situation, paragraph (1) requires, as did the prior version of the rule, that service be made on the party, not his or her attorney. Ark. Code Ann. 16-58-131, which addressed these issues and other matters now governed by Rules 4 and 5, has been deemed superseded.

Several changes have been made in subdivision (c)(2) concerning facsimile filings. The statute on which the rule was originally based, Ark. Code Ann. 16-20-109, has been deemed superseded. The first sentence of subdivision (c)(2) has been amended to require any clerk with a facsimile machine to accept facsimile filings of any paper filed under this rule and to allow the clerk to charge a fee of \$1.00 per page. Previously, the rule provided that a clerk with a facsimile machine "may accept" papers filed by fax. Apparently, some clerks refused to accept papers filed in this manner even though they had the necessary equipment. Also, language in the first sentence requiring that an original document be substituted for a fax filing if the latter were not made on bond-type paper has been deleted. This provision was considered unnecessary in light of improvements in the quality of fax machines. The third sentence of subdivision (c)(2) has been amended to require that the clerk stamp or otherwise mark the facsimile copy as filed on the date and time that it is received in the clerk's office or, if received when the office is closed, on the next business day. The last sentence of the prior version of the rule, which provided that "[t]he date and time printed by the clerk's facsimile machine on the transmitted copy shall be prima facie evidence of the date and time of filing," has been deleted because the date and time are printed by the sender's facsimile machine, not the clerk's.

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version of the rule, which provided that "[t]he date and time printed by the clerk's facsimile machine on the transmitted copy shall be prima facie evidence of the date and time of filing," has been deleted because the date and time are printed by the sender's facsimile machine, not the clerk's.

Addition to Reporter's Notes, 2000 Amendment: - Subdivision (c)(1) of the rule has been amended to provide that discovery materials, except for requests for admission, shall not be filed with the clerk unless the court so orders. This is the practice in the federal district courts in Arkansas and in several states. See Rule 5.5(f), Rules of the U.S. District Courts for the Eastern and Western Districts of Arkansas; Rule 2-401(d)(2), Md. R. Civ. P.; Rule 191.4, Tex. R. Civ. P. Under the prior version of the rule, the filing of such materials was optional absent a court order.

Addition to Reporter's Notes, 2002 Amendment: - Since 1989, subdivision (b)(2) has allowed service of papers, other than the summons and complaint, on attorneys via commercial delivery companies. This subdivision has been amended to allow service by this method on parties as well, but with the safeguard that the commercial delivery company be court-approved. Section 1-2-122(b) of the Arkansas Code, which allowed service by "an alternative mail carrier," has been deemed superseded.

Subdivision (b)(2) has also been revised to provide that "service by commercial delivery company is presumptively complete upon depositing the papers with the company." This provision parallels that for service by mail, which "is presumptively complete upon mailing." Subdivision (b)(3), which applies when the circuit court has continuing jurisdiction, has been amended to reflect the addition of new paragraph (C) of Rule 4(d)(8).

Addition to Reporter's Notes, 2005 Amendment: - Rule 5(c)(1) has been amended. In some counties, the county clerk serves as the ex officio clerk of the probate division of the circuit court. Ark. Code Ann. 14-14-502(b)(2)(B). Uncertainties have arisen in these circumstances about the effect of filing a pleading or paper with the wrong clerk. A sentence has been added to subsection (c)(1) to make plain that, in these counties, a party complies with Rule 5 when the document is file marked by either the circuit clerk or the county clerk. Similar clarifying language has been added to Rule of Civil Procedure 3(b) (filing a complaint), Administrative Order Number 2 (clerk's docket and filing), and Rule of Appellate Procedure - Civil 3(b) (filing a notice of appeal).

Addition to Reporter's Notes, 2008 Amendment: Subdivision (c) of the rule has been amended to incorporate Administrative Order 19's requirements, which grant the public broad access to case records while safeguarding confidential information in those records. (The Administrative Order is appended to the Rules of Civil Procedure.) Amended Rule 5(c) obligates lawyers, and pro se litigants, to identify and shield confidential information that is necessary and relevant to the case by redacting that information in all publicly available documents they file with the court. The rule places primary responsibility for protecting information that the law has adjudged confidential on those individuals best situated to recognize and protect that information—lawyers and parties. They know the facts of their cases better than court staff or courts; they create almost all the documents coming into the court's record; and they have the greatest incentive to minimize and protect confidential information in case records.

Under subdivision 2(B), courts, court agencies, and clerks are responsible for omitting or redacting confidential information from case records—including orders,

judgments, and decrees that they create. A parallel change reflecting this obligation in judgments and decrees has been made in Rule of Civil Procedure 58.

Administrative Order 19 defines categories of confidential information and the Commentary to the Order explains the legal basis for the confidentiality. Section VII of the Order lists the following categories of confidential information in case records that are excluded from public access absent a court order allowing disclosure:

- (1) information excluded from public access pursuant to federal law;
- (2) information excluded from public access pursuant to the Arkansas Code Annotated;
- (3) information excluded from public access by order (including protective order) or rule of court;
- (4) Social Security numbers;
- (5) account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINs);
- (6) information about cases expunged or sealed pursuant to Ark. Code Ann. § 16-90-901, et seq.;
- (7) notes, communications, and deliberative materials regarding decisions of judges, jurors, court staff, and judicial agencies; and
- (8) all home and business addresses of petitioners who request anonymity when seeking a domestic order of protection.

The Commentary to Section VII of Administrative Order 19 discusses confidential information protected from public disclosure under federal and Arkansas law. The Commentary includes a non-exhaustive list of Arkansas Code Annotated sections regarding confidentiality of records whose confidentiality may extend to the records even if they become court records. See also the Arkansas Personal Information Protection Act, Ark. Code Ann. § 4-110-101, et seq.

New subsection (c)(2) embodies Order 19's important threshold requirement: only confidential information that is "necessary and relevant to the case" should be in a case record. Litigants are likewise best able to make this evaluation. And because they must redact any such information in a case record, litigants will have an incentive to reduce redactions by screening out unnecessary and irrelevant confidential information when creating documents for filing.

The amended rule provides two methods of redaction: blacking out the protected information or inserting a bracketed reference to the fact of redaction. Both achieve Administrative Order 19's balance between public access and confidentiality. If a redaction covers all of any multi-page document, then the rule requires listing the name of the document and the number of pages redacted in the publicly available court file. No useful purpose would be served by having a stack of blacked-out pages in the public file. Because a litigant will have deemed redacted information necessary and relevant, the court will need access to that information in handling and deciding the case. To allow this access, subdivision 2(B) obligates litigants to file unredacted copies of all their court papers under seal.

Some state agencies who deal routinely with confidential information—such as the Public Service Commission—have developed specialized rules for handling and protecting that information. Administrative Order 19 and its implementing rules in the Rules of Civil Procedure do not apply directly to those agencies' internal proceedings. But when a case from the PSC or other agency is appealed, the Rules of Appellate Procedure—Civil and the Rules of the Supreme Court and Court of Appeals do apply. Those Rules now implement Administrative Order 19 by incorporating and applying the redaction provisions of the Rules of Civil Procedure to all briefs, petitions, and other papers filed on appeal. Current agency

procedures about confidential information that do not conflict with the new redaction rules are permissible. For example, confidential PSC documents are filed at the Commission on pink paper under seal. This and similar procedures supplement, but do not conflict with, the basic scheme required by Rule of Civil Procedure 5(c)(2). Certain appeal records will therefore contain materials shaped by these supplementary procedures, which is acceptable.

Addition to Reporter's Notes, 2010 Amendment: Subdivision (b)(2) has been amended to clarify that service upon an attorney by "electronic transmission" includes service by e-mail. The amendment also provides that although service by electronic transmission is complete upon transmission, it is not effective if it does not reach the person to be served. As with other means of service, a claim that service by electronic transmission was not actually received may be raised by the person upon whom service was attempted. A corresponding amendment to Rule 6(d) adds the three-day additional response time allowed for service by mail or commercial delivery company to the time permitted for response to service by electronic transmission.

History Text:

History. Amended July 9, 1984, effective September 1, 1984; amended June 24, 1985, effective September 1, 1985; amended July 7, 1986, effective September 15, 1986; amended November 20, 1989, effective January 1, 1990; amended December 10, 1990, effective February 1, 1991; amended November 8, 1993, effective January 1, 1994; amended November 18, 1996, effective March 1, 1997; amended January 28, 1999; amended June 24, 1999; amended January 27, 2000; amended January 24, 2002; amended February 10, 2005; amended October 23, 2008, effective January 1, 2009; amended June 2, 2011, effective July 1, 2011.

Associated Court Rules:

Rules of Civil Procedure

Group Title:

II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

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